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No. 87-5565

Supreme Court, U.S.
FILED
FEB 23 1988

JOSEPH P. STAMOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

CHERLYN CLARK,
Petitioner,
v.
GENE ETER,
Respondent.

On Writ of Certiorari to the
Superior Court of Pennsylvania

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 24, 1987
CERTIORARI GRANTED JANUARY 11, 1988

8987

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LIST OF RELEVANT DOCKET ENTRIES

Court of Common Pleas of Allegheny County, Pennsylvania

- September 22, 1983—Complaint for support made and filed
- October 3, 1983—Order of Court for blood tests on October 17, 1983 filed
- January 25, 1984—Order of Court scheduling pre-trial conference
- February 17, 1984—Order of Court directing Plaintiff to respond to Defendant's Motion to Dismiss Complaint within 20 days
- March 7, 1984—Answer to Defendant's Motion to Dismiss filed by Plaintiff along with Motion for Judgment in favor of Plaintiff
- April 10—Order scheduling hearing for May 8, 1985
- July 9, 1985—Opinion filed
- August 5, 1985—Notice of Appeal to Superior Court filed

Superior Court of Pennsylvania

- April 11, 1986—Appellant's Application for Permission to File an Application for Remand
- April 15, 1986—Appellee's Answer to Application for Permission to File Application for Remand
- October 23, 1986—Application for Permission to File an Application for Remand denied. Decision and order affirming decision of Allegheny County Court of Common Pleas
- November 6, 1986—Motion for Reargument. Appellant's Proof of Service of Notice to the Attorney General pursuant to Pa. R.C.P. 235 and Pa. R.A.P. 521
- November 7, 1986—Order requesting answer to Motion for Reargument be filed. Per Curiam
- November 17, 1986—Answer to Motion for Reargument
- December 18, 1986—Motion for Reargument denied

Supreme Court of Pennsylvania

January 20, 1987—Petition for Allowance of Appeal from
the Decisions of Superior Court dated October 23, 1986 and
December 18, 1986 filed

February 5, 1987—Brief in Opposition filed

May 27, 1987—Judgment entered. Petition denied, Per Curiam

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

Case No. FD83-06955

File No. _____

CHERLYN CLARK,
Plaintiff

v.

GENE JETERS,
Defendant

APPLICATION FOR CHILD SUPPORT SERVICES

I, Cherlyn Clark, request the Domestic Relations Division to provide CHILD SUPPORT services to which I am entitled upon application under federal law and the Child Support Enforcement Program of Pennsylvania.

If necessary, I request use of the Parent Locator Services, and help if necessary in establishing paternity.

My case began 8-2-83. This confirms that any child support services I requested before this form was available were sought and applied for under the Child Support Enforcement Program, described in Public Law 93-647 (1975).

Signature: Cherlyn Clark

Print Name: _____

Date: September 22, 1983

Counselor: _____

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

Case No. FD83-06955

COMPLAINT FOR SUPPORT

FIPS CODE: S42 CTY 003

Support for: 1 child X New -- Amended

Allegheny County X

PLAINTIFF(S)

Cheryln Clark

vs

DEFENDANT(S)

Gene Jeter

PLAINTIFF INFORMATION:

Name: Cherlyn Clark

Address: 2525 Chauncy Drive

Pittsburgh, PA 15219

Birthdate: 10-29-49

Social Security No. 191-04-0555

Telephone No. 621-0539

DEFENDANTS FOR WHOM SUPPORT IS SOUGHT:

Tiffany Clark 6-11-73

DEFENDANT INFORMATION:

Name: Gene Jeter

Address: 2342 Webster Avenue

Pittsburgh, PA 15219

1. Date Married: _____, Location: _____
Common Law: — yes — no.

2. If not married, state name, date, place of birth of
each child born out of wedlock:

Tiffany Clark 6-11-73 Mercy Hospital

6. Amount of Public Assistance received for: Mother
and 1 child

Amount: 131.00 Per: 2 weeks

State if claim is assigned IV-D Agency: — yes — no.

7. Amount of support asked for spouse and child(ren),
parent(s), or child(ren) only:

Undetermined

9. Set forth any information to aid in locating the
defendant:

Age: 46 Weight: 170 Height: 5'11" Color of hair:
Black Race: Black

Color of eyes: Brown Glasses: — yes X no Scars/
marks: _____

WHEREFORE, Plaintiff respectfully prays that an order be entered against Defendant in favor of Plaintiff in the amount of \$—— per month for support of Plaintiff and/or child(ren) and/or parent(s) or child(ren) over 18 years of age.

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

/s/ Cheryl Clark
Plaintiff's Signature

DATE: 8-2-83

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

Case No. FD 83-06955

CHERYLN CLARK,
Plaintiff

vs.

GENE JETER,
Defendant

ORDER OF COURT FOR BLOOD TESTS AND
SUBSEQUENT CONFERENCE

AND NOW, this 5th day of October, 1983 it appearing to the Court that the defendant has not acknowledged paternity of the child Tiffany Clark born on June 11, 1973 in Pittsburgh, Pa., to Cheryl Clark, mother, the parties are hereby directed to present themselves at the University of Pittsburgh Paternity Testing Laboratory, 3600 Forbes Ave., Pittsburgh, PA. 15213, promptly at 8:00 a.m. on October 17, 1983 for blood tests. Parties are to remain until permission to leave has been granted by the person in charge.

Doctors Bruce Rabin and G. Singh, or such other medical doctors or technicians who are designated by them or either of them, are hereby appointed by the Court to make the blood tests, to take or direct the taking of such number or samples of blood from the respective persons and to repeat the process of taking additional samples of blood from their respective persons to enable the examiners to make and perform such tests for the Court with a view to advising the Court of their professional opin-

ions concerning the possibility, probability, or certainty of whether the alleged father could be the biological father of such child.

If any of the parties call the doctors hereinabove named as expert witnesses, the costs of said experts shall be paid in advance by the parties calling them.

Failure to appear will constitute *Contempt of Court*, and the party failing to appear will also be charged with the costs of the blood tests.

IF ANY PARTY REFUSES TO SUBMIT TO SUCH TESTS OR FAILS TO APPEAR, THE COURT MAY RESOLVE THE QUESTION OF PATERNITY AGAINST SUCH PARTY.

In the event that Defendant is excluded by the blood tests, an order will be issued by the Court.

If Defendant is not excluded, it is FURTHER ORDERED that the parties hereto are directed to appear before J. L. Ward, Counselor, or whomever else may be designated on the 17th day of November, 1983 at 10:15 a.m., to review the blood test reports and to determine the future course of this case.

Failure to appear at the conference may result in a hearing being held at that time and the Court may resolve the question of paternity.

THIS IS YOUR FINAL NOTICE TO APPEAR FOR BLOOD TESTS AND CONFERENCE. You may be entitled to be represented by court appointed counsel, free of charge, if you are indigent.

BY THE COURT:

/s/ Musmanno, J., J.

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

[Title omitted in printing]

ORDER OF COURT FOR PRE-TRIAL CONFERENCE

AND NOW, to wit, this 24th day of January, 1984, the Court being informed that a conference was held with the parties subsequent to the report of blood tests. Notwithstanding the said report, the defendant will not acknowledge paternity of the child, Tiffany Clark, born on June 11, 1973 to Cheryl Clark, mother.

A pre-trial conference shall be held by the Court with all the parties, and their attorneys, who shall appear on the 16th day of February, 1984, at 2:15 p.m. before Strassburger, Judge.

If plaintiff fails to appear for pre-trial conference as above scheduled, the Sheriff of Allegheny County will be directed to bring the plaintiff to Court.

If the defendant fails to appear for pre-trial conference, paternity will be established against him and an appropriate order for support and cost of blood tests will be entered against him.

NO ADDITIONAL NOTICE WILL BE GIVEN TO THE PARTIES.

BY THE COURT:

/s/ Strassburger, J.

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

(Title Omitted in Printing)

**MOTION TO DISMISS COMPLAINT
AND ENTER JUDGMENT IN FAVOR OF DEFENDANT**

Defendant, Eugene Jetter, by his attorney, Craig A. McClean, Esquire, hereby moves this Honorable Court for an order dismissing the complaint herein and directing entry of Judgment in favor of defendant pursuant to the provisions of 42 Pa.C.S.A. § 6704(e).

This motion is based on the ground that plaintiff's action has no merit in that the action is barred by the statute of limitations.

This motion is based on the pleadings of record herein and on the affidavit of Eugene Jetter filed herewith.

Respectfully submitted,

/s/ Craig A. McClean
CRAIG A. MCCLEAN
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF ALLEGHENY :

**AFFIDAVIT IN SUPPORT OF ANSWER TO MOTION
TO DISMISS COMPLAINT AND ENTER JUDGMENT
IN FAVOR OF DEFENDANT**

Before me, the undersigned authority, personally appeared EUGENE JETTER, who, being duly sworn according to law, deposes and states as follows:

1. that Tiffany Clark was born on June 11, 1973;
2. that he is *not* the father of Tiffany Clark;
3. that the action for paternity filed against him was filed in 1983, a period of time in excess of six years from the child's date of birth;
4. that he never voluntarily contributed to the support of Tiffany Clark; and
5. that he never acknowledged in writing his paternity in regard to Tiffany Clark.

/s/ Eugene Jeter
EUGENE JETTER

SWORN to and subscribed before me this 23 day of Nov., 1983.

/s/ Carol A. Kronz
Notary Public

(Notary Seal Omitted in Printing)

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

(Title Omitted in Printing)

**PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION TO
DISMISS AND TO ENTER JUDGMENT IN FAVOR OF
DEFENDANT AND PLAINTIFF'S MOTION TO ENTER
JUDGMENT IN FAVOR OF PLAINTIFF
ON THE RECORD**

Plaintiff, Cheryln Clark, by her attorneys, Neighborhood Legal Services Association and Evalynn Welling, hereby answers Defendant's Motion to Dismiss the Complaint and to Enter Judgment in favor of the Defendant and further moves this Court to direct entry of judgment in favor of Plaintiff as follows:

ANSWER

1. The statute which Defendant claims bars Plaintiff's action (42 Pa. C.S.A. Section 6704(e)) is unconstitutional and violates Plaintiff's rights and her daughter's rights to equal protection and due process guaranteed to them by the Fourteenth Amendment of the United States Constitution.

2. Even if the statute is not unconstitutional, its operation has been tolled by the fraudulent or misleading actions and inactions of the Department of Public Welfare and the threats and assault by Defendant which prevented Plaintiff from an earlier filing of her Complaint for Support.

**MOTION FOR ENTRY OF JUDGMENT
IN FAVOR OF PLAINTIFF**

3. The blood test performed by the Court-appointed laboratory in the within case reveals a probability of 99.3% that Defendant is the father of Tiffany Clark.

4. This motion is further based upon the pleadings and blood test records herein as well as on the attached affidavit of Cheryln Clark filed herewith.

Respectfully submitted,

/s/ Evalynn Welling
EVALYNN WELLING
Attorney for Plaintiff

**AFFIDAVIT IN SUPPORT OF ANSWER TO MOTION
TO DISMISS COMPLAINT AND ENTER JUDGMENT
IN FAVOR OF DEFENDANT**

Cheryln Clark, who, being duly sworn according to law, deposes and states as follows:

1. That she is the Plaintiff in the above action and the mother of Tiffany Clark, born June 11, 1973.
2. That Eugene Jeter is the father of Tiffany.
3. Cheryln Clark dated Eugene Jeter for ten months prior to the conception of Tiffany. Mr. Jeter was married at the time.
4. When Plaintiff told Eugene in September, 1972 that she was pregnant, he insisted she get an abortion. He repeatedly insisted that she get an abortion and she repeatedly refused.
5. On one occasion after she told Eugene that she would not get an abortion, he drove her to the parking lot of a store in Oakland, pushed her down between the bucket seats of the car, began choking her and told her he did not want to be involved. When he released her, he beat the steering wheel of the car and threatened her again.
6. After this incident she terminated her relationship with Eugene Jeter.
7. Plaintiff listed David Green, a fictitious person, as the father of Tiffany on Tiffany's birth certificate rather than Eugene Jeter, because she was afraid of being physically harmed by Mr. Jeter.
8. When she applied for public assistance on or about June, 1973, she told her caseworker that David Green was the father of Tiffany and that she did not know his whereabouts.

9. On or about July 1973, when Tiffany was approximately one month old, in response to a request she made for money for Tiffany, Mr. Jeter drove a friend to her house and had the friend deliver \$10.00 to pay for milk for Tiffany.

10. On or about August 1973, she met with Eugene Jeter at her sister, Rose Carter's home, to discuss Tiffany's support, at which meeting Mr. Jeter refused to provide her with support.

11. On or about the last week in December, 1977, Mr. Jeter gave her \$25.00 for a Christmas present for Tiffany.

12. On or about June, 1978, Mr. Jeter gave her \$25.00 for Tiffany after she requested the money. Her cousin, Mr. George Johnson, accompanied her to Mr. Jeter's barber shop when she received the \$25.00.

13. On or about August 1978, she informed her caseworker from the Department of Public Welfare, Joanne Zarzeczy, that Eugene Jeter was the father of Tiffany and David Green was a fictitious name. An application for child support services was made by the caseworker and an interview with a support officer was scheduled.

14. On or about August 1978, she met with a support officer and provided him with Eugene Jeter's address and the license plate number of one of his cars.

15. Plaintiff was not told in August 1978 by her caseworker or the support officer that it was necessary for her to make application for support payments in the Family Division of the Allegheny County Court of Common Pleas.

16. On or about late May or early June, 1981, on two different occasions, Eugene Jeter gave her money for Tiffany's support; the first time, occurred when they met in front of Vann Elementary school and he gave her \$30.00 in response to her request for money. The second

time occurred when she met Mr. Jeter as she was getting off a bus and he voluntarily gave her \$5.00 for Tiffany's support.

17. From 1978-1983, she periodically asked her caseworker at the Department of Public Welfare about Mr. Jeter's responsibility to support Tiffany, but she was not told what action was being taken by the Department. She was not told at any time until 1983, that she was responsible for going to the Family Court Division to file for support. During this period she had four different caseworkers.

18. On or about August, 1983, her caseworker, Pauline Dougherty, for the first time, told her that she would have to go to the City County Building to file for support, which she did.

19. On October 5, 1983, a support hearing was scheduled but Mr. Eugene Jeter did not appear. The counselor at that hearing told her that given the circumstances, it would be necessary for her to file a paternity action against Mr. Jeter. The counselor had her fill out the necessary forms to file the paternity action.

20. On or about October, 1983, she called Mr. Jeter and asked him why he did not come to the support hearing at which time he threatened her and told her he would give her money if she would drop the case.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
 COUNTY OF ALLEGHENY)

BEFORE ME, the undersigned authority, a Notary Public in and for said County and Commonwealth, personally appeared Cheryl Clark, who, upon being duly sworn according to law deposes and says that the facts set forth in the foregoing Affidavit are true and correct to the best of her knowledge and belief.

/s/ Cherlyn Clark

SWORN TO and subscribed before me this 8th day of February, 1984.

/s/ Karen J. Monk
 Notary Public

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

(Title Omitted in Printing)

TRANSCRIPT OF HEARING

. . . .

[3] WEDNESDAY MORNING SESSION

May 8, 1985

(Thereupon, all witnesses were sworn.)

THE COURT: We are here today on an issue framed by defendant's motion to dismiss the complaint and plaintiff's answer thereto and basically the question is whether the Statute of Limitations bars this paternity action. I guess for procedural purposes, we can stipulate as to the date of birth of the child and the date that the complaint was filed.

The child was born June 11, 1973 and the complaint was filed, it doesn't really matter which date is used, either September 22 or September 23, 1983. I generally use the date on the document that is filed with the Court here. There sometimes is a delay in taking the papers over to the Prothonotary's Office. In this case it is a shorter delay than usual, only one day. It doesn't really make any difference whether we use the 22nd or [4] 23rd, just so we have a single date. I will call it the 22nd.

MISS WELLING: Fine.

THE COURT: With that as the preface, it would seem that the defendant made out a prima facie case that the statute has been run, and, therefore, the burden would then shift to the plaintiff to show why this statute has been tolled for one reason or another. I think it is the plaintiff's burden of going forward at this point.

MISS WELLING: We will proceed at this time, Your Honor. We have a stipulation to enter into on the record between Mr. McLean and myself. We are stipulating to the admission of the birth certificate of Tiffany Lynn Clark as Exhibit 1.

THE COURT: Slow down. This is Plaintiff Exhibit 1, the birth certificate.

MISS WELLING: Yes. The application for child support services, Pennsylvania Child Support Program is Exhibit 2.

THE COURT: The date on that?

[5] MISS WELLING: 8/17/78. Authorization to change beneficiary and to pay order in arrearages to Commonwealth of Pennsylvania, Department of Public Welfare.

THE COURT: Would you go through that again?

MISS WELLING: Authorization to change beneficiary and to pay order and arrearages to the Commonwealth of Pennsylvania, Department of Public Welfare. Exhibit 3.

THE COURT: The date on that?

MR. McLEAN: 8/16/78.

MISS WELLING: Notice of support referral, Department of Public Welfare, 8/16/78 is Exhibit 4. And child support action notice August 17, 1978. That would be Exhibit 5. Exhibits 1 through 5 are contained in Cherlyn Clark's Department of Public Welfare case record.

I have the caseworker here to testify, but because of this stipulation we will now let her go.

THE COURT: I think maybe we better [6] keep her here for a few minutes.

MS. WELLING: That is the end of the stipulation.

THE COURT: Put the caseworker on, there may be a couple of questions that I want to ask her.

MR. McLEAN: I am not stipulating, all I am doing is not objecting.

THE COURT: To authenticity.

MR. McLEAN: Authenticity of documents, that's all.

MISS WELLING: I was intending to have Ms. Rhodes testify solely as custodian of records. She was not the caseworker on this record at anytime.

THE COURT: This raises some questions I have.

DOLORES RHODES,

called as a witness herein, being first duly sworn, was examined and testified as follows:

[7] DIRECT EXAMINATION

BY MISS WELLING:

Q State your name for the record.

A Dolores Rhodes.

Q Ms. Rhodes, your occupation?

A Income Maintenance Worker Two, Commonwealth of Pennsylvania.

Q What does an Income Maintenance Worker do?

A I am the caseworker for Cherlyn Clark and other clients.

Q As the caseworker, what function do you perform?

A I determine whether they are eligible for assistance, determine the amount of the assistance they get, the benefits, I really take care of their whole case.

Q And as part of that function as being the caseworker, are you custodian of a Public of Welfare, Department of Public Welfare case record?

A Yes.

Q Was there such a case record compiled for Cherlyn Clark?

A Yes.

Q Are you presently the custodian?

A Yes.

[8] Q Are these case records kept in the normal course of business of the Welfare Department?

A Yes.

Q Are the contacts and information having to do with the individual recipient of Welfare contained in the case record?

A Yes.

Q Are they written down contemporaneously, or close to the same time that they occur?

A Yes.

Q When did you come on this case yourself?

A I think it transferred to me last year, I'm not certain. It is written in the dictation there.

Q I will give you the record.

A I'm pretty sure it was April of last year. It was April of '84 when I took over the case record.

Q Were you an employee for the Department of Public Welfare in 1978?

A Yes.

Q Are you aware of what the policy is and procedures in the handling of support actions from the Welfare Department were at that time?

A I wasn't a caseworker at that time, I was in clerical [9] as a clerical worker.

MISS WELLING: Those are all of my questions.

THE COURT: Do you know if Ms. Clark would have been directed to come down to the Domestic Relations Department to file a support complaint?

THE WITNESS: Yes, it is an eligibility requirement before you could be put on assistance that you go to the Court to file for support.

THE COURT: Apparently she did not do that?

THE WITNESS: I can't say if she did or not.

THE COURT: We don't have a complaint filed until 1983 and she apparently was on Welfare at least as early as 1978?

THE WITNESS: If you can claim good cause like if you are afraid of the man or afraid that he may bother you, you can claim good cause and they will let you not file for support.

THE COURT: Would that have been in [10] writing?

THE WITNESS: Usually a form. One thing, there may have been at one time more to this record. In the last two years we have been allowed to purge records, that meant, I will see her tomorrow for redetermination interview. Once I see her, I will take everything of this record from 1980 and throw it away.

THE COURT: If you throw things away, do you have a record, would there be no record of what was thrown away?

THE WITNESS: No, we are allowed to purge them. They want them purged.

THE COURT: You don't even have a listing of the documents thrown away when you throw them away?

THE WITNESS: No, we are supposed to keep all the support records of payments. Anything other than that, you are supposed to purge. We have been directed to purge them. I don't know, whoever had the record before me if anything had been thrown away.

[11]

CROSS-EXAMINATION

BY MR. McLEAN:

Q Can you tell from your records whether Miss Clark was receiving welfare for the benefit of her child, Tiffany Clark before August 16 of 1978?

A It should be on the face sheet. Right here, this record was opened, this is usual. This date here is usual when this case was opened. This case here is 9/26/79, right here. On the face sheet. There is not an older face sheet. I have to assume this is when she first made application.

THE COURT: When? In 1979? These documents are from '78.

THE WITNESS: Well, there could have been an older face sheet in there since you could purge the record, that may have been destroyed.

THE COURT: The child support action notice has dates referred to child support unit of October 2, 1975.

THE WITNESS: This is the latest face sheet. They do change them. It might have been filled up. That is the last entry on [12] there.

BY MR. McLEAN:

Q I will show you that document that Judge Strassburger mentioned. I will ask you if you can from this document ascertain whether the child was receiving welfare prior to August 16 of 1978?

A This would have been filed, one of our forms that she would have been sent, that, this is making me nervous. This is one of our forms we would have had to have in our records if this child was receiving assistance. This worker works at my office now.

Q Are you aware whether the requirement that as a condition of eligibility the claimant named a father existed in 1975?

MISS WELLING: Objection, she testified she wasn't involved with being a caseworker, she was clerical.

THE COURT: Overruled, she can answer the question.

THE WITNESS: No, some people said they didn't know who the father was.

[13] BY MR. McLEAN:

Q Was it a requirement—

THE COURT: The question was, are you aware whether it was a requirement?

THE WITNESS: No, I'm not aware.

BY MR. McLEAN:

Q Are you aware whether in 1975 a person had to file a support action?

A Yes, I am, they did.

Q Are you aware in this case whether Miss Clark ever filed a support action against David Green?

A No, I'm not, I wasn't there at the time.

THE COURT: Do we know whether she did, does anybody know whether she did?

MISS WELLING: She knows.

MR. McLEAN: No, I searched the files, Your Honor. I searched both criminal records and searched the records that we have up here and as an officer of the Court, I state that there is no record of an action for support.

THE COURT: We have beat that dead horse. Thank you.

MISS WELLING: What clarification for [14] the record, that last exhibit referred to by Ms. Rhodes was dated 1978. It has notations regarding 1975.

THE COURT: Yes.

MISS WELLING: I call Cherlyn Clark.

CHERLYN CLARK,

called as a witness herein, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS WELLING:

Q Will you state your name.

A Cherlyn Clark.

Q Where do you live?

A 2525 Chauncey Drive.

Q When were you born?

A October 29, 1949.

Q Do you know Gene Jeter?

A Yes, I do.

Q When did you first get to know him?

A Back in 1971.

Q What was your relationship at the time?

[15] A We were dating.

Q How old were you then?

A Twenty-one.

Q Were you working?

A Yes.

Q Did you at any time after you started to date Mr. Jeter have sexual intercourse with him?

A Yes.

MR. McLEAN: Objection.

THE COURT: What's the objection?

MR. McLEAN: The line of inquiry isn't material. We are solely here to discuss specific issues which are related to only the issues of statute and estoppel.

THE COURT: With the possible exception of one case in history, there haven't been any children born without sexual intercourse.

MR. McLEAN: We stipulated to the birth of the child.

MISS WELLING: One of the claims we have raised is that of duress which is as a result of an assault which was the result of a conversation having to do with this [16] pregnancy.

THE COURT: It may be relevant for background. If you lose this case you will get your discovery done for the paternity case, what do you care?

MR. McLEAN: Thank you.

BY MISS WELLING:

Miss Clark, about when did you become pregnant?

A Late September or October of '72.

Q Did you have any discussion with Mr. Jeter about this?

A Yes.

Q What was that?

A I told him I was pregnant.

MR. McLEAN: Objection, I would like some statement as to the time.

BY MISS WELLING:

Q About what time did you tell him you were pregnant?

A In the afternoon.

THE COURT: I think what month and what date during the year.

BY MISS WELLING:

Q Was it close to the time you found out you were [17] pregnant?

A Yes.

Q You say you told Mr. Jeter one afternoon close to the time you found out you were pregnant. What was his reaction?

A He said, "I knew it."

Q Did he say anything else?

A No, not at that time.

Q Did you have any other conversations with him later?

A Yes.

Q What did he say then?

A He said to me, "I want you to have an abortion."

Q What was your response?

A I said, "I'll think about it."

Q Did you think about it?

A Yes.

Q Did you tell him what you decided after you thought about it?

A Yes, I did.

Q What did you tell him?

A I told him I wasn't going to have no abortion.

Q What happened then?

A Well, he drove me home.

[18] Q You were in the car?

A Yes.

Q In his car?

A Yes, his car. When I told him I wasn't going to have an abortion, he drove off and he drove down Bedford Avenue real fast. He went through all the stop signs. We ended up on the Blvd. and he swung in Isaly's parking lot.

Q The Blvd. of The Allies?

A Right. He pushed me down between the front seats of the car and he straddled me and started choking me.

Q Were you smaller then than you are now?

A Yes, I was.

Q What was your approximate weight?

THE COURT: A lot of us were.

MISS WELLING: Isn't that the truth.

THE WITNESS: About 135, 140.

BY MISS WELLING:

Q So he pushed you down between the seats in his car?

A Yes.

Q What kind of car was it?

A I believe a Firebird.

[19] Q Bucket seats?

A Yes.

Q What happened after he pushed you down?

A Well, he just started choking me saying you're going, excuse my language, fuck me up, you know, he kept saying that over and over.

Q Then what happened?

A I was crying and he got off me and he pulled out of Isaly's parking lot and drove down past Magee Hospital. He stopped. He started beating the steering wheel repeating himself, "you're going to fuck me up", over and over again. And then he drove me home. I got out of the car.

Q This incident happened right after you told him you weren't going to have an abortion?

A Yes.

Q Had you ever known Mr. Jeter to carry any weapons?

A Yes.

Q What?

A I have seen him with a gun on him before.

Q What was your response to this incident when he was choking you and you were yelling, was he yelling at you?

[20] A Yes, he was.

Q What was your response?

A I was very afraid and I was crying because he hurt me at that time.

Q Did you continue in the relationship?

A No.

Q How did you break it off, did you?

A Well, during the time I was pregnant, we just didn't talk to each other. He wouldn't come near me. He wouldn't have anything to do with me. He said, "If you have that baby, that's all on you."

Q Did you talk to anybody in your family about the incident with his choking you?

A Yes, I did.

Q Who did you talk to?

A My sister.

Q What is her name?

A Rose Carter.

Q Did you tell her about it close to the time that it happened?

A Yes.

Q Did you confide in anybody else in your family about it?

A No.

[21] Q Why was that?

A I knew that if I was to tell my family, my brothers would probably have gone down to his job and they probably would have had some trouble.

Q What kind of trouble do you think?

A A fight.

Q Tiffany was born in June of 1973?

A Yes.

Q You didn't list any name on her birth certificate, did you?

A I listed David Green.

Q I think in the birth certificate—

MR. McLEAN: Objection, counsel is making statements.

THE COURT: Sustained.

MISS WELLING: Let me show it to her.

MR. McLEAN: I ask for an offer of proof on this showing. There is no statement from the witness that there is any loss of memory or anything else to warrant her being shown that document.

MISS WELLING: Your Honor, it is an [22] exhibit in the case. I want to show her the exhibit and ask her some questions about it.

THE COURT: You can do it, but, of course, the statement she listed David Green is on the record.

MISS WELLING: That is correct.

BY MISS WELLING:

Q This is Exhibit 1 which came out of your welfare record. I see here that it said birth certificate for Tiffany?

A Yes.

Q It says sex, female. It has her name. David Green is not listed on there. What explanation did you have for that, you just testified you listed David Green.

A I made up the fictitious name because after Gene jumped on me that time, I was afraid to list him. I didn't know what he would do to me.

Q So Gene Jeter is not listed on this exhibit, that is for the reason you just said?

A Right.

Q At the time Tiffany was born, did you apply for [23] welfare?

A Yes, I did.

Q And did you tell the Welfare who the father was?

A Yes, I did.

Q Who did you tell Welfare that the father was?

A David Green.

Q Why did you tell Welfare that David Green was the father?

A Well, I just made up that name. They know she had to have somebody for a father. I just made up that name.

Q Did you tell the Welfare people you were making up a name?

A Not at the time I didn't.

Q After Tiffany was born, did you see Gene Jeter again?

A Yes.

Q Did you ever in the first few months after Tiffany was born, receive any support from him?

A Well, when Tiffany was two months old he came to my sister's house and we had a discussion about support. At that time he said he knew this was going to happen and he didn't have any money to help support her.

Q This was at your sister's house?

[24] A Yes.

Q Did he ever send you any money to the house around that time or before?

A Yes.

Q Do you remember when that was?

A Yes, I got \$25 from Gene in December of 1977.

Q I'm talking about right after Tiffany was born, did he give you any milk money for the baby?

A Yes, he did.

MR. McLEAN: Objection, Your Honor, I would like to make a request here. Please let the record show that the witness has in her hand a piece of paper. I have

noticed the witness from the questions which have been directed to her referring to this piece of paper. I believe she is testifying from this piece of paper and that the words that she is putting on the record in answer to these questions aren't her own words and I request to see the piece of paper right now.

THE COURT: You are entitled.

MISS WELLING: Go ahead.

[25] MR. McLEAN: Let the record show I am giving the piece of paper back to the witness.

THE WITNESS: Thank you.

BY MISS WELLING:

Q Miss Clark, what is on that piece of paper?

A I just have here the times Gene has given me money.

Q Where did you get those times from?

A That's the times he really gave me money. I just wrote them down because I knew I would be nervous up here and I did not want to mess up, you know.

Q Something you wrote down yourself?

A I wrote this down myself.

Q Did you write it down from your own memory?

A From my own memory, yes.

Q You wrote it down so you wouldn't be nervous and forget when you got up here?

A Right.

MR. McLEAN: Your Honor, may I have some inquiry whether the witness's testimony with respect to these events and specific times has been exhausted and whether she is testifying from the piece of paper or whether [26] she actually does remember? I think I am entitled to that.

MISS WELLING: I think she just testified she had written down this stuff from her own memory. I will ask her.

THE COURT: Well, she's supposed to testify from her own memory without any aids unless she needs the

aid after she said she can't remember to help refresh her recollection. If she has no recollection at all, then she can use the document that is past recollection recorded, if it meets the standards for that exception to the hearsay rule. Apparently this doesn't. It might meet the exception for present recollection refreshed. We are in no person's land at this point.

BY MISS WELLING:

Q Miss Clark, let's go back and just try, fold up your piece of paper now, and let's go back to the things you actually remember. Things you remember here today. If you find you can't remember something, then we will talk about whether you can look at the piece of paper to help you remember [27] the dates. In the first couple of months after Tiffany was born, in the summer of 1973, you had testified you had gotten some money from Mr. Jeter to help pay for milk. Do you remember how much money it was?

A I believe it was about \$10.

Q How did you get that money?

A He sent the money in by some young man to give to me.

Q He didn't actually come to your house?

A No, he did not.

Q Some young man came?

A Yes.

Q How did you know it was Mr. Jeter who sent it?

A He told me that Gene sent the money.

Q Did you see Gene at that time?

A He was parked outside in the car.

Q He didn't come in?

A No, he didn't.

Q Also during that same summer when you were talking about, you testified you had some kind of meeting with Gene after Tiffany was born.

A Yes, I did.

Q How old was Tiffany at this time?

[28] A I believe she was two months old.

Q Had you called up Mr. Jeter to initiate this?

A No, I didn't.

Q The meeting went on at your sister's house?

A Yes.

Q Miss Rose Carter?

A Yes.

Q What happened?

A We discussed support. He said, "I knew this was going to happen and I can't support Tiffany." He said, "I might give you something from time to time, but that is all I'm going to do."

Q Was this a calm meeting?

A Not really.

Q Was there any anger expressed by anyone?

A Well, I could tell he was mad. I was upset, you know, but we wasn't shouting at each other.

Q Now, at this meeting, did he give you any money at that time?

A No, he did not.

Q You said he was mad and you were upset, at this time he essentially told you—

MR. MCLEAN: Objection, a lot of [29] latitude as to even specific directions of time.

THE COURT: Your point is made, the objection is sustained. There is not enough time for speeches.

BY MISS WELLING:

Q What I am trying to ask you, why didn't you file a support complaint after you had this conversation with Mr. Jeter?

A Well, I still was afraid that if I made it legal, I didn't know what he would do.

Q Why is that?

A Because when I was pregnant, he attacked me that one time and I didn't know what he would do if I really made it legal.

Q What do you mean by really made it legal?

A Well, came down here and made him support Tiffany, put him down as her father.

Q How was that different from just asking him for money?

A Well, I knew that he has given me money a few times. He didn't seem to be upset about that. I knew that if he was made to do it, he would not really [30] want to do it. I didn't know what he would try to do to me.

Q Now, did you ever later receive any more support payment from him?

A Yes.

Q Do you remember what the next one was?

A I believe December of 1977.

Q Is that around Christmas time?

A It was after Christmas.

Q What was the circumstances then?

A He came up in my home and gave me \$25 for Tiffany for some shoes.

Q Had you asked him to give you the money?

A Yes, I did.

Q How did you ask him?

A I called him up and I asked him would he please buy her something for Christmas. He said, "What does she need?" I said, "Some shoes." So he brought up \$25.

Q And then after that Christmas of 1977, did you again get any more money from him?

A Yes, I believe June of 1978.

Q What happened then?

A I went to his shop.

[31] Q What kind of shop?

A A barber shop at that time. He gave me, I think \$25 for Tiffany's birthday.

Q Her birthday is in June?

A Yes.

Q When you went to the shop, what was your conversation with him at that time, if you can remember?

A I asked him, I said her birthday is next week and would you give me something for her birthday and he gave me \$25.

Q Did he give you any more money then?

A No, not then.

Q After that time?

A Yes.

Q When was that?

A He gave me some more money I believe it was the next year. I would have to refer to my notes.

Q Let's go back here, this was in June of 1978 that you said he, you went to the barber shop and he gave you \$25 for her birthday. The exhibits that have been entered in this case show that in August of 1978 you apparently went to the Welfare Department to talk about Gene and [32] support. Can you explain to the Court what went on then?

A Well, I came down and spoke with the claim officer and I gave them Tiffany's father's correct name and I gave them his address and everything I knew, all the information I had on him. I told them that I wanted to file support for Tiffany.

Q What happened that made you decide to go legal, whatever, at this point?

A Well, I became frustrated because Gene never really wanted to help support Tiffany. He didn't mind giving money now and then, but that just wasn't enough. You know, so I just felt confident and I felt that it was time I took a stand and just came forth with the truth.

Q Were you no longer afraid at that point?

A No, I was not.

Q Why do you think you weren't afraid anymore?

A Well, because I'm older and I have matured and I just feel as though it was the right thing to do.

Q Now, I would like to show you the exhibits. These are papers that have been entered as Exhibits 2 through

5 in your case as the application [33] for child support services, authorization to change beneficiary into, pay order and arrearages. Notice support referral and child support action notice. Have you seen those papers before?

A Yes.

Q Were these papers that you were involved in having filled out in 1978 when you went to the Welfare Department?

A Yes.

Q What was your intent when you cooperated with the Welfare Department in filling these papers out?

A My intent was to try to get support for Tiffany.

Q And at the time that you did this, did you tell me whether or not you felt there was anything else you had to do in order to get support for Tiffany?

A No, I did not. I thought that once I gave the Welfare the information, that they would pursue it. I didn't know that I had anything else to do.

Q What is it that made you think that?

A Because the Welfare usually got behind women to sue the fathers to take care of these children. [34] I thought once I gave them the correct information, that was all I had to do.

Q At the time that you went to the Welfare Department and gave them this information and these forms were filled out, did anyone tell you that you then also had to go to the Court and fill out more papers?

A No, they did not.

Q Did anyone tell you that you had to go to Court at all?

A No.

Q In the next few years after 1978, did you hear anything from anybody regarding your support?

A Yes, one of my workers, Mrs. Farrow, I was discussing this case with her. She told me I have to go to the City-County Building to file support.

Q When was that?

A I believe it was four years later. I don't remember the exact date, in '82 or '83, I don't know.

Q Did you go to Court to file papers with the Court after that?

A Yes, I did.

[35] Q In the time between 1978 and 1982 or 1983, whenever it was that they told you that you had to go to Court, did you talk to the Welfare Department at all about what was happening on your support action?

A Yes, I did.

Q What was the gist of those conversations?

A They would just say it was backlog and they didn't know anything else.

Q Was this in response to questions by you?

A Yes, it was.

THE COURT: I'm not sure what the thrust of this is. I thought in chambers you indicated this fell within virtually identical facts of Astemborski and you weren't pursuing the ground that she had attempted to file by filing with Welfare.

MISS WELLING: Your Honor, as to the state being the grounds for toll of the statute, that's true, I'm not pursuing that. I think the mistake and lack of information are relevant to the Picket and Mills test for determining whether or not the statute is valid in this [36] particular kind of case. Those are factors that I picked up on by those courts as reasons that the six year statute reasons that the statute of limitations in paternity action is inappropriate.

THE COURT: Okay, if you are preserving your grounds for the petition for certiorari to the United States Supreme Court, I will let you make that record. That's a long way away.

MISS WELLING: Yes, it is, Your Honor.

BY MISS WELLING:

Q Now, after 1978, anytime before you actually went to Court to apply for support, did Mr. Jeter give you any more money for Tiffany?

A He gave me, I believe he did.

THE COURT: Since we don't have all day, let her refresh her recollection by looking at the document.

MR. McLEAN: Could I look at the document again, Your Honor? The piece of paper?

THE COURT: The piece of paper, [37] whatever. It is not the magna carta. It is still a document I suppose.

MR. McLEAN: Let the record show I am handing the witness the piece of paper.

THE WITNESS: I received money.

MR. McLEAN: Would you ask her if her recollection is refreshed, please?

BY MISS WELLING:

Q After looking at this paper, is your recollection refreshed as to the answer to my question that you received any more money between 1978 and 1982 or '83 from Mr. Jeter?

A Yes.

Q Without looking at the paper, can you testify from your own memory?

A Yes, the end of May, 1981 I got \$30 from Gene. The following week he gave me \$50.

Q Was that in response to your request?

A The first time when he gave me the \$30 I had approached him about giving me some money for Tiffany. The second time which was the next week he just drove up and said here, here's something [38] for Tiffany.

Q Did he say anything at that time about why he was giving you this money?

A No.

Q Just here, it's for Tiffany?

A Yes.

Q Did he give you any more money between that time, the first week in June, is that what you said?

A The end of May.

Q The end of May, 1982?

A '81.

Q '81, I am sorry. The end of May, 1981, between the end of May, 1981 and the time you went to Court to file the papers, support papers, did he give you any more money for Tiffany?

A No, he didn't.

MISS WELLING: Those are all of my questions.

CROSS-EXAMINATION

BY MR. McLEAN:

Q Miss Clark, did you call him up at any time between May of 1981 and August of 1983 to request money?

[39] A No, I didn't.

Q Did you go to see him?

A No, I didn't.

Q Do you know your welfare caseworker's telephone number?

A Not by heart, no.

Q How often do you go there?

A Every six months.

Q Have you been going there every six months or so since you have been on welfare?

A No.

Q Are you aware whether Welfare is charged with, the individual caseworker is charged you with making monthly reports?

A I don't know.

Q Did you talk with your caseworker over the telephone more frequently than your six months you go and see the person?

A I don't talk with my worker that often, no.

Q Has that been pretty much the way it has been all through since you have been getting welfare?

A During the time I filed for support I kept calling down there to find out what they were doing [40] with

my case. I don't call down there that often other than that.

Q It said that is, you thought that was all you had to do?

A That's right.

Q Why did you think that?

A I thought the welfare would pursue this. No one ever told me that I had to file support papers over here for Tiffany.

Q You have seen those exhibits in this case, is that correct?

A Yes.

Q I am going to show you one of the exhibits that doesn't have a sticker on it. I don't know which one it is numbered, but it is the authorization to change beneficiary pay order arrearages to the Commonwealth of Pennsylvania, Department of Public Welfare, date of 6/75.

THE COURT: Number 3.

BY MR. McLEAN:

Q I ask if you can look down at the bottom of that and identify whether that is your signature?

A Yes, it is.

Q That is your signature?

[41] A Yes.

Q I apologize to the Court and Counsel because I really actually hate this question when it is asked. Miss Clark, do you read and write the English language?

A Yes, I do.

Q Do you understand it?

A Yes, I do.

Q In the first paragraph on this, would you read at the little letter "c" to little letter "d". At the little letter "c" beginning there.

A "The undersigned waives no rights to bring an action for support order or any modification thereof, but

it is understood that the Department of Public Welfare is authorized to institute any action for support in the name of the undersigned and to request modifications of any orders made if the undersigned does not do so."

Q That's all. Now, Miss Clark, you testified that you thought that was all you had to do and nobody told you to go to Court?

A That's right.

Q Nobody told you not to go to Court, did they?

A Nobody told me to come here.

[42] Q Nobody told you not to go?

A No, nobody told me that I had to file those papers here. Nobody.

THE COURT: Please Miss Clark, just answer the question.

THE WITNESS: No, they did not.

MISS WELLING: May we have direction from the Court that Mr. McLean not raise his voice?

THE COURT: They both raised their voices at each other.

MR. McLEAN: Your Honor, with respect to time, I assume that this Court kept good notes. I am not going to ask this witness questions that compare her affidavit filed in this matter with the testimony. If you want me to direct that inquiry, I will, but it is a pleading in the case and she specifically signed it. I am not going to question her on that. If you will take due notice from your notes to compare it with regard to time and amount of support to that affidavit.

THE COURT: Fine.

[43] BY MR. McLEAN:

Q In 1973, with whom were you living?

A My grandmother.

Q Is your grandmother alive today?

A No, she is not.

Q How many brothers do you have?

A Two.

Q Wasn't it your testimony that you didn't confide in these people regarding this problem with Mr. Jeter?

A That's right.

Q Were you in your grandmother's presence as you increased in size during the term of your pregnancy?

A Yes, I was.

Q Did you have any discussions whatsoever with your grandmother regarding the birth of a child and who the father was?

A No, I did not.

Q Did you have any discussions with your brothers about any weddings or who the father of the child was?

A No, I did not.

Q You said that you asserted a fictitious name. Do you [44] know what the word fictitious means?

A Yes.

Q What does it mean?

A I believe made up.

Q False?

A Yes.

Q Inaccurate?

A That's right.

Q A lie?

A Yes.

Q You testified that you didn't know what Mr. Jeter would do?

A That's right.

Q If you came down here and put your name—

A Put his name down.

Q Put his name down. When you say here, you mean this building?

A When I filed for support, that is what I am saying.

Q So, in 1978 you were aware that this is where you came to file an action in support?

A I found out, when it—

Q Answer the question. She can't help you with the times.

[45] A I did not, when I spoke with the claim's officer in 1978, no one told me to come here to file the papers, no one.

Q You said you got older and you matured which is why you did what you did?

A Right.

Q The Welfare caseworker is here today. We have the Welfare files. You didn't out of the clear blue sky decide to call up and name Gene Jeter as the father, did you?

A No, I thought about it.

Q Is it true that Welfare contacted you and was pressing you for a name for the father of this child?

A No, they were not.

Q Isn't it true that at that time Welfare was making a big deal with you about getting somebody to pay for this child other than welfare?

A No.

Q Did you understand that by perhaps filing support, that you could get more money than you were getting on welfare?

A I knew that.

Q You got older, more mature. How old are you now?

[46] A I'm thirty-five.

Q How old were you in 1978?

A I'm getting a bit nervous.

Q Does twenty-nine sound good?

A Good enough.

Q When did you get older and more mature?

A When my daughter—

Q Were you older and mature at the age of twenty-five?

A Not as mature as I am now.

Q You testified that you called up Gene Jeter on the telephone and asked him for money for Christmas?

A Yes, I did.

- Q You said the kid needed shoes?
 A She did.
 Q Was he supposed to mail that to you?
 A He told me he would bring it up to my home.
 Q Did he?
 A Yes, he did.
 Q Who was there, do you have any witnesses?
 A My sister was there.
 Q How about your daughter?
 A She was there.
 Q What about the meeting on the street?
 [47] A It was just him and I.
 Q Before that, before 1977 in December, did you have any meetings with him, did you see him around?
 A Yes, I would see him.
 Q You didn't run and hide, did you?
 A No, I didn't.
 Q You didn't have anything to hide from him?
 A No.
 Q Did you speak with him?
 A Occasionally.
 Q Did you go up to him on the street, did he talk to you?
 A No.
 Q You didn't avoid him, did you?
 A No, I didn't.
 Q You lived in the neighborhood?
 A Yes, I did.
 Q He worked in the neighborhood?
 A Yes, he did.
 Q You weren't afraid of him, were you?
 A I was when I was pregnant.
 Q Back when you were pregnant, but not after that? You had a degree of pride?
 [48] A A while after that I was afraid of him.
 Q A couple years?
 A Yes.

- Q At most? Did you say yes?
 A Yes.
 Q That is what I thought you said.
 A That is what I said.
 Q Your grandmother is not alive now, is she?
 A No, she is not.
 Q When you were with Mr. Jeter and you dated him as you said that you did—
 A Yes, I did.
 Q Where did you go?
 A We went everywhere.
 Q Do you know the names of the people you saw and the places you frequented?
 THE COURT: I said you have a little bit of discovery on the paternity case, I didn't say you could take her deposition here in Court.
 MR. McLEAN: With respect, I'm getting with respect to my specific point in my brief, I have reached the issue of laches. I have shown, I think with this [49] witness without even my witness that memories have failed, that potential witnesses have died and I'm now—
 THE COURT: Either the statute of limitations applies or it doesn't apply. There is no laches in this case.
 MR. McLEAN: I will back off of that.
 BY MR. McLEAN:
 Q Let me see your piece of paper. When did you make this piece of paper?
 A Last night.
 Q Last night, you mean yesterday, right?
 A Last night, yes.
 MISS WELLING: Objection, I object on the ground of relevancy.
 MR. McLEAN: Would you like me to respond, Your Honor? I have a few questions about credibility. I am wrapping this thing up.
 THE COURT: Let's do that.

BY MR. McLEAN:

- Q Where did you get the piece of paper?
 [50] A From my home.
 Q And where did you get the information?
 A From here (indicating.)
 Q Do you remember signing an affidavit in this case?
 A At my attorney's office.
 Q It asserted facts and dates and things?
 A Yes.
 Q Have you recently seen that?
 A Yes.
 Q When did you see it?
 A I saw it yesterday.
 Q Where were you yesterday?
 A In my attorney's office.
 Q I am giving you back your piece of paper. Do you remember sitting in Judge Strassburger's chambers with me and with Judge Strassburger?
 A Yes.
 Q Nobody else was present?
 A Right.
 Q Do you remember the things that you said?
 A Some of them.
 Q Do you have any explanation to this Court why the the things you said now are different from the [51] things you said in your affidavit which are different from the things you are saying in this courtroom today?
 MISS WELLING: Objection, I ask for an offer of proof on that before—there has been no testimony that her statements were materially different than the affidavit from the testimony and no record at all of what was said between the Judge and yourself and Miss Clark when I was not present.
 THE COURT: He didn't ask that question and will not ask that question because he's not going to testify and I'm not going to testify.

MR. McLEAN: I will graciously withdraw the question. If I might have fifteen seconds to collect my wits. That's all the questions I have of this witness.

MISS WELLING: I have a few on redirect.

THE COURT: Be quick. Go ahead.

[52] REDIRECT EXAMINATION

BY MISS WELLING:

Q Miss Clark, you testified in your direct testimony that you were frightened to make it legal to file a support complaint?

A Yes.

Q Up until the time you actually filed it in 1978, do you remember testifying to that?

A Yes.

Q You told Mr. McLean when he cross-examined you that you were only frightened of Mr. Jeter for a couple of years. Tell me, were you talking about the same kind of fear, explain to me what the difference was between being afraid of him till '78 and being afraid until just a couple years ago?

A As I stated, when I was pregnant, I was afraid of him. He carried a gun and he did attack me and I didn't know what he would do to me if I came forth with this information. I feel that I have matured. I feel he is no longer a threat to me. I am doing this for our daughter, not for me. I feel that it is his obligation just as much as it is mine to help take care of her.

[53] Q When you testified in cross-examination that you were afraid for a couple of years, did you mean the same thing as when you said you were afraid up until the filing in '78 with the Welfare Department?

A Yes.

Q So that couple of years meant—

MR. McLEAN: Objection, objection.

THE COURT: Sustained.

MISS WELLING: That's all the questions I have.

THE COURT: You may step down.

MISS WELLING: Your Honor, may I ask for a few minutes?

I am due in Bankruptcy Court at 11:00. I will have to make a phone call.

THE COURT: I expect we won't have a whole lot more testimony. I don't imagine Mr. Jeter's testimony will be lengthy?

MR. McLEAN: No, Your Honor, especially if I am permitted to lead.

(Thereupon, a recess was held.)

[54] MISS WELLING: We have another witness.

MR. McLEAN: I thought the plaintiff rested.

THE COURT: I didn't hear her say that.

ROSE CARTER

called as a witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS WELLING:

Q Will you state your name for the record please?

A Rose Carter.

Q Are you the sister of Cherlyn Clark?

A Yes.

Q Have you lived in Pittsburgh since 1973?

A Yes.

Q Since 1973, have you kept in contact with your sister?

A Yes.

Q Did you also know Mr. Jeter?

A Yes.

[55] Q How long have you known him?

A Since they were dating. I knew him prior, but I got to know him better when they started dating.

Q About when was that?

A She was twenty-one or twenty-two, something like that.

Q Were you aware that Mr. Jeter and Miss Clark had broken off?

A Yes.

Q Did you know about when that was?

A After he found out she was pregnant. They kind of stopped seeing each other.

Q Do you know what the reason was they stopped seeing each other?

MR. McLEAN: Objection, I would like to know whether she does know.

THE WITNESS: I do know.

BY MISS WELLING:

Q What was that reason?

A That she was afraid of him because Gene had jumped at her when she told him she was pregnant and he can be intimidating to her. She—

MR. McLEAN: Objection, I would like to have her answer the question. She is [56] talking about—

THE WITNESS: He had jumped on her.

MR. McLEAN: Your Honor—

THE WITNESS: My sister and I talk every day. This incident was brought to my attention.

THE COURT: Do you want to list your objections?

MR. McLEAN: Yes, Your Honor, I ask that the words that were emitted be stricken from the record as being non-responsive to the question. The question was strictly directed to a reason, what that reason was. She is going into her analysis of the mind of the witness and also of my client. I don't think she has the capacity to do that.

THE COURT: Objection sustained. Just answer the question.